

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Tony L. Hammond; and  
Nanci E. Langley

Complaint of the City and  
County of San Francisco

Docket No. C2011-2

ORDER ADDRESSING COMPLAINT AND AUTHORIZING  
SETTLEMENT NEGOTIATIONS

(Issued August 16, 2011)

I. INTRODUCTION

A. Procedural Context

The instant Complaint was filed with the Commission on May 18, 2011.<sup>1</sup> It involves two statutory claims about the mode of delivery the Postal Service provides to residents of single-room occupancy buildings (SROs) in San Francisco, California.

The impetus for the Complaint stems from three developments that span more than 5 years. The first was a growing concern, on the part of the City and County of San Francisco (San Francisco or Complainant) about the reliability and security of mail

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<sup>1</sup> Complaint of the City and County of San Francisco, May 18, 2011 (Complaint).

delivery to residents of SROs. Delivery to SROs generally occurs under Postal Service regulations specifying the “single-point” mode of delivery for hotels, schools and similar places. This means a letter carrier typically leaves a mail bag at or in the building, such as at the doorstep, in the lobby or at a central desk.<sup>2</sup> Building management is responsible for delivering the mail to residents and for handling other tasks, such as forwarding. This contrasts with centralized delivery, where a letter carrier delivers mail pursuant to a regulation covering the residents of a multi-unit building, such as an apartment building, via individual, locked mailboxes.<sup>3</sup>

*2006 ordinance.* The second development was San Francisco’s adoption, in 2006, of an ordinance aimed at addressing its concerns about SRO mail delivery. Complaint at 2. The ordinance required SRO owners to install (by the end of 2007) individual, secure, Postal Service-compliant mailboxes for each resident. San Francisco asserts that prior to adoption of the ordinance, there was at least one conversation with a Postal Service employee indicating that installation of Postal Service-approved mailbox installations in SROs would result in a switch from single-point delivery to centralized delivery.

Following adoption of the ordinance, some SRO owners installed individual mailboxes and the Postal Service apparently began delivering mail to residents of these SROs via centralized delivery. However, this practice was later reviewed (as part of a broader evaluation) and found to be contrary to the postal regulation that establishes single-point delivery as the appropriate mode of delivery for SROs. The Postal Service informed a city official that it would continue to deliver mail via centralized delivery to SROs where individual mailboxes had been installed, but would use single-point delivery for all others, including those that installed individual mailboxes in the future. See *id.* Exh. 1 at 1-2.

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<sup>2</sup> See POM § 615.2 (single-point delivery).

<sup>3</sup> See POM § 631.45 (centralized delivery).

*Federal lawsuit.* The third development was San Francisco's filing of a Federal lawsuit in 2009. The grounds, in brief, were that the Postal Service's post-ordinance actions raise constitutional questions and regulatory (title 39) issues.<sup>4</sup> The court dismissed the regulatory issues (finding them within the Commission's purview), but retained jurisdiction over the constitutional claims. At this point, the record shows that the Federal lawsuit is still pending. A lengthy discovery phase is nearing an end; dispositive motions are to be heard by October 13, 2011; and a trial date has been set for January 9, 2012. See Answer of the United States Postal Service, August 8, 2011, Exh. 1 (Answer).

B. The Commission's Section 3662 Jurisdiction

Commission jurisdiction over formal complaints is set out in section 3662(a). This section provides:

Any interested person...who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission....

39 U.S.C. 3662(a).

San Francisco generally claims that there are deficiencies in the Postal Service's delivery of mail to most SRO residents in California, and that these deficiencies cause harm to the affected residents and to San Francisco. Complaint at 1. For purposes of establishing Commission jurisdiction, it relies on two of the provisions identified in section 3662: sections 401(2) and 403(c). Section 401(2) grants the Postal Service, as one of its general powers, the authority to adopt, amend, and repeal any rules and regulations necessary to the execution of its statutory functions, to the extent such rules

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<sup>4</sup> *City of San Francisco, et al. v. United States Postal Service*, N.D. Cal. (1964).

and regulations are not inconsistent with title 39. 39 U.S.C. 401(2). Section 403(c) states that in providing services under title 39 “the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.” 39 U.S.C. 403(c).

C. The Nexus Between Complainant’s Assertions and Section 3662 Jurisdiction

*The asserted link to section 401(2).* San Francisco’s reading of postal regulations leads it to conclude that mail delivery to residents of SROs should be provided under centralized delivery regulations, rather than under regulations for single-point delivery, assuming the SRO has individual, locked mailboxes. It maintains that the Postal Service erroneously classifies SROs under the delivery regulation for hotels and schools, and is therefore failing to enforce its own regulations. Complaint at 16.

*The asserted link to section 403(c).* San Francisco asserts that the Postal Service’s decision to use single-point delivery for residents of SROs reflects their socioeconomic status, especially relative to apartment dwellers, and unfounded assumptions about the transience of SRO residents, and therefore unduly discriminates against SRO residents and grants an undue preference to apartment dwellers in violation of 39 U.S.C. 403(c). *Id.* at 12.

## II. POSTAL SERVICE PLEADINGS

On June 7, 2011, the Postal Service filed a motion seeking dismissal of count 1 of the two-count Complaint.<sup>5</sup> The basis was lack of jurisdiction under section 401(2). The Postal Service did not seek dismissal of count 2, stating instead that the Complainant arguably set out a claim with respect to undue discrimination. *Id.* at 2. The Complainant filed an opposition to the Motion.<sup>6</sup> The Commission granted the Motion, in part, by striking allegations in count 1 that correspondence between the San Francisco Postmaster and a city official had not been adopted pursuant to Federal rulemaking procedures.<sup>7</sup> This disposition led to the filing of the Postal Service's Answer on August 8, 2011.

In its Answer, the Postal Service serially addresses each paragraph, providing responses that admit, deny, disclaim sufficient knowledge to the assertion, or state no response is needed. With respect to points central to the Complaint, it denies that San Francisco has alleged any “deficiencies” in mail delivery service and that “the socioeconomic circumstances of delivery customers matter when making decisions about the appropriate mode of delivery.” Answer at 1-2. The Postal Service also denies the applicability of POM 631.45, contending the controlling regulation is POM 615.2, Mail Addressed to Persons at Hotels, Schools, and Similar Places. *Id.* at 4. It adds that San Francisco has not made any showing, as required under POM 631.6 (Conversion of Mode of Delivery) that conversion to another mode of delivery is warranted. *Id.*

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<sup>5</sup> Motion of United States Postal Service for Partial Dismissal of the Complaint, June 7, 2011 (Motion).

<sup>6</sup> City and County of San Francisco's Answer in Opposition to Motion of United States Postal Service for Partial Dismissal of the Complaint, June 15, 2011.

<sup>7</sup> Order Granting, in Part, Postal Service Motion to Dismiss Count 1, July 29, 2011.

Significantly, the Postal Service also states that it “would not object to delivering mail at those locations by placing it into a locked receptacle....” *Id.* at 3.

### III. STATUTORY ALTERNATIVES FOR COMMISSION ACTION

The Commission has two affirmative alternatives for handling a section 3662 complaint under section 3662(b). One is to begin proceedings upon a finding that the complaint raises material issues of fact or law. 39 U.S.C. 3662(b)(1)(A)(i).<sup>8</sup> The other alternative is to issue an order dismissing the complaint. 39 U.S.C. 3662(b)(1)(A)(ii). Action under either alternative is to be taken within 90 days and supported by a written statement setting forth the basis for the determination. 39 U.S.C. 3662(b)(1) and 3662(b)(1)(B).

### IV. ANALYSIS AND WRITTEN DETERMINATION

The parties recognize that the Postal Service's current delivery practices do differentiate between residents of many SROs in San Francisco and apartment dwellers. Thus, the current issue before the Commission is whether the pleadings indicate that there are material questions of fact and law on this point.

In its Complaint, San Francisco concludes that in light of the parties' inability to resolve their dispute during mediation associated with the Federal lawsuit, it believes that additional steps to settle this matter prior to the filing of this Complaint would have been futile. Complaint at 15-16. However, as referenced above, the Postal Service Answer contains what appears to be a good faith offer to address the concerns that initially motivated this controversy by providing a new delivery option for residents of most SROs in San Francisco: delivery of the mail to a locked receptacle, with management continuing to be responsible from that point. The Commission views the Postal Service's offer as an attempt to appropriately balance the concerns of the

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<sup>8</sup> The statute does not specify the precise nature of the proceedings.

Complainant (for more security and reliability in mail delivery) and the Postal Service (for efficiency and effectiveness, including the cost implications of adding numerous delivery points at an especially critical financial time).<sup>9</sup>

The Commission therefore defers action on this Complaint and directs that the parties begin settlement negotiations based on the Postal Service's offer. Pursuant to 39 U.S.C. 505, the Commission designates James Waclawski as officer of the Commission (Public Representative) to represent the interests of the public. The Public Representative shall also serve as settlement coordinator. The Commission strongly believes that all concerned would be best served by a negotiated settlement of this matter. It directs the Public Representative to file a report on the progress of settlement within 30 days of the issuance of this Order.

#### V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission defers its decision on whether the Complaint of the City and County of San Francisco presents material questions of fact and law, pending settlement discussions between the parties.
2. The Commission directs the Complainant and the Postal Service to immediately engage in settlement negotiations with the goal of expeditiously resolving this controversy based on the Postal Service's offer.
3. The Commission, pursuant to section 505, appoints James Waclawski to serve as Public Representative in this proceeding and to serve as settlement coordinator.

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<sup>9</sup> San Francisco states that 18,000 San Franciscans live in SROs. *Id.* at 6.

4. The Commission directs the settlement coordinator to file a report within 30 days of the date of this Order.
5. The Commission directs the Secretary of the Commission to arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove  
Secretary